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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,388	02/20/2004	Clifford R. Rabal	1582.102	6411
7590	01/25/2006		EXAMINER	
Jack D. Stone Scheef & Stone, L.L.P. Suite 1400 5956 Sherry Lane Dallas, TX 75225			JIANG, CHEN WEN	
			ART UNIT	PAPER NUMBER
			3744	
DATE MAILED: 01/25/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/783,388	RABAL, CLIFFORD R.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chen-Wen Jiang	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 February 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-6,8-15,17-22 and 24-30 is/are rejected.

7)  Claim(s) 7,16,23 and 31 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 20 February 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1,8,9,10,17,24,25 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin (U.S. Patent Number 4,748,765).

In regard to claims 1 and 17, Martin discloses a live well apparatus and method as shown in Fig.2. The apparatus comprises a cooling chamber 9, a circulation pump 8 and heat exchange jacket with ice. Martin also discloses other means of cooling the water, e.g. thermonic chips, a refrigeration unit may be utilized instead of ice in the compartment.

In regard to claims 8,9 and 24, Martin discloses a warm water line 44, a cool water line 14 and a bypass line 25 and a three-way valve 24.

In regard to claims 10 and 25, cool water line 14 is above the water level in the live well 41.

Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will

inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

3. Claims 1,3,4,5,17,19,20 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang et al. (U.S. Patent Number 6,564,010).

Huang et al. disclose an aquarium cooling system. Referring to Figs.1-3, the system comprises an aquarium 200, thermoelectric elements 20,20a, a control mechanism 32-35, cooling chamber 11, fans 25,25a, fins 29,29a, aquarium inlet pipe 101 an outlet pipe 201. The pump of the system is inherent in the system. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *Ir re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

#### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (U.S. Patent Number 4,748,765) in view of Huang (US 2002/0168276).

Martin discloses the invention substantially as claimed. However, Martin discloses aeration head and does not disclose air enter the pump. Huang discloses an aeration pump in the same field of endeavor for the purpose of pump with aeration. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Martin with an aeration pump in view of Huang so as to combination pump and aeration in a single unit.

6. Claims 3-5,11-14,19-21 and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (U.S. Patent Number 4,748,765).

The Examiner takes Official Notice that fin, fan, water jacket or in combination are well known in the prior art for thermoelectric cooling and it is a design choice based the heat dissipation requirement in the system.

7. Claims 6,15,22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (U.S. Patent Number 6,564,010) in view of McDougle (U.S. Patent Number 6,962,019).

In regard to claims 6 and 22, Huang et al. disclose the invention substantially as claimed including live well temperature setting, outlet temperature sensor and control mechanism. Huang et al. disclose the control is based on the outlet temperature sensor. McDougle discloses control based on the live well temperature in the same field of endeavor for the purpose of activating and

deactivating the system. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Huang et al. with a temperature based on the live well temperature in view of McDougle so as to control the mechanism.

In regard to claims 15 and 30, the Examiner takes Official Notice that fin, fan, water jacket or in combination are well known in the prior art for thermoelectric cooling and it is a design choice based the heat dissipation requirement in the system.

8. Claims 6,15,22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (U.S. Patent Number 4,748,765) in view of Basala (U.S. Patent Number 6,044,901).

In regard to claims 6 and 22, Martin discloses the invention substantially as claimed including live well temperature sensor 23 and control mechanism 40. Martin discloses the circulation pump control and is silent when other heat exchanger is used. Basala discloses control both circulation pump and heat exchanger in the same field of endeavor for the purpose of activating and deactivating the system. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Martin with a control in view of Basala so as to activating and deactivating the system.

In regard to claims 15 and 30, the Examiner takes Official Notice that fin, fan, water jacket or in combination are well known in the prior art for thermoelectric cooling and it is a design choice based the heat dissipation requirement in the system.

***Allowable Subject Matter***

9. Claims 7,18,23 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (571) 272-4809. The examiner can normally be reached on Monday-Thursday from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang  
Primary Examiner

